IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2596 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABAJI MANGAJI

Versus

DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE

Appearance:

MR YN OZA for Petitioners

Mr.Joshi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/06/2001

ORAL JUDGEMENT

1. The petitioners are serving on the post of Armed Police Constables. They are challenging the action of the authority in not transferring them from the branch of Armed Police Constables to the branch of Unarmed Police Constables. It is the say of the petitioners that the

Circular issued by the State Government at Annexure `A' dated 1.8.1988, prohibiting transfer of Armed Constables to the branch of Unarmed Constables is illegal and arbitrary and that the petitioners who have passed S.S.C. examination are entitled to be transferred to the branch of Unarmed Police Constables. It is the say of the petitioners that those Armed Police Constables who have passed S.S.C. examination and who are serving as Armed Police Constables should be allowed to be transferred to the branch of Unarmed Police Constables and the Circular mentioned above is illegal and arbitrary. It is the say of the petitioners that, even though they were selected as Unarmed Police Constables, because of non-availability of the post of Unarmed Police Constables, they chose to go to the branch of Armed Police Constables, but subsequently, when vacancies were available in the branch of Unarmed Police Constables, the case of the petitioners for transfer to the branch of Unarmed Police Constables should have been considered by the Government. According to the petitioners, the petitioners are entitled to be transferred from the branch of Armed Police Constables to the branch of Unarmed Police Constables.

2. Mr.Joshi, learned AGP, at the time of hearing of this petition, pointed out a decision of this Court in Amruthai Dhanjibhai Rathod & Ors. v. State of Gujarat & Ors., 1998(2) GLR 1284, wherein this Court observed as under :-

> " ... ...
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> Both, armed and unarmed constables are the posts created under the Bombay Police Act, 1951, and in supersession of all the prevailing orders in this behalf, the Government of Gujarat, by its notification published on 6th August, 1979, framed the Rules regulating recruitment to the post of Constables (Armed Branch, Unarmed Branch and Women Branch) in the Gujarat Subordinate Service, Class III, in the police department. These Rules are known as Constables (Armed Branch, Unarmed Branch and Women Branch) Recruitment Rules, 1979. Rule 2 of the said Rules provides that appointment to the post of Constable (Armed Branch, Unarmed Branch and Women Branch) in the Gujarat Subordinate Service, Class III, in the police department shall be made by direct selection.

These Rules of 1979 came to be amended by the Constable (Armed Branch, Unarmed Branch and Women Branch) Recruitment (Amendment) Rules, 1988, notified on 15/19-2-1988. Sub-clause (i) of clause (b) of Rule 3 of the Rules of 1979 has been amended and now the qualification for both, armed constable or unarmed constable, has been prescribed to be Secondary School Certificate examination passed or its equivalent. The amendment made in Rules of 1979 is material for decision of this case. From the Rules of 1979, one thing is very clear that the mode of recruitment to the post of unarmed or armed constable was by direct recruitment. No other mode has been provided. The other modes of appointment, inter alia, may be by transfer from the branch of armed constabulary to unarmed constabulary, but that is not the method of recruitment or mode of recruitment provided under the Rules of 1979. In the Special Civil Application No.3418 of 1979, the decision of this Court has been restricted on the Government Circular dated 6th March, 1979 or the Circular dated 7th October, 1976, but the Counsel who was appearing for the respondents therein has not brought to the notice of the Court, the statutory Rules which have been framed by the State Government for recruitment to the post of armed constables and unarmed Constables. These Rules have come into force after 6th March, 1979 and these two posts are altogether distinct. There is no interchangeability between these posts. The questions for recruitment on both the posts are altogether different. For both these posts, S.S.C. is not the qualification prescribed in original Rules. There are other distinguishable features in these two posts. Admittedly, different training is imparted to armed constables and unarmed constables. The nature of duty of armed constable and unarmed constable is different. Over and above, the seniority of these two categories have been separately maintained. Not only this, the channel of promotion has been provided to different posts. So there is no

interchangeability. These posts are altogether different, separate and distinct. Different qualifications are prescribed, different seniority has been prescribed and mode of promotion is also different from these posts and as such for all the purposes, these two posts are of different categories. When this is the position of statutory Rules, whether the Circular of 6th March 1979, though on this question this Court has not gone into, can be said to be legal and in consonance with the Rules of 1979? Similarly, a question does arise as to whether the subsequent Circular of 1985 can also be said to be in consonance with the Rules of 1979. The obvious reply, in the light of the Rules of 1979, would be that they cannot. The respondents could not have provided a mode of recruitment to the post of unarmed constable from the post of armed constable, dehors of in the Rules of 1979. It is settled law that administrative Circulars cannot be contrary to the statutory Rules and where the administrative Circulars are repugnant to the statutory Rules, the statutory Rules are to be given effect to. The administrative Circulars cannot supersede the statutory Rules. Much reliance has been placed by the Counsel for the petitioner on the decision of this Court in Special Civil Application No.3418 of 1979, but in that decision, Rules of 1979 have not been considered as nobody has brought them to the notice of the Court. The matter would have been different that after referring to the Rules of 1979, decision in that Special Civil Application has been given, which is not the case here.

When the posts of armed constables and unarmed constables are to be filled in only by direct selection and when these two posts are altogether different, distinct and are separate categories of posts, and when there is no mode of recruitment by transfer, the claim of the petitioners for their transfer on the post of unarmed constable does not sound any merit. It is true that for all these years, prior to 1988, policy decision or the administrative

> Circulars were given effect and many of the armed constables were transferred to unarmed branch as unarmed constables on the basis of their qualifications, but that administrative policy or Circular does not give any vested right to the petitioners or it cannot be said that they have acquired any indefeasible right of transfer from the post of armed constables to unarmed constables.
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> ... ..."

3. In view of the aforesaid decision of this Court, the point in issue can be said to have been squarely covered by the said decision. In that view of the matter, no relief can be given to the petitioners in view of the aforesaid judgment. The petition, therefore, is required to be dismissed in view of the said judgment. The petition is, therefore, dismissed. Rule is discharged, with no order as to costs.

12th June, 2001 (P.B. Majmudar, J.)

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(apj)